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**JUN 28 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Sakagami et al :  
Application No. 10/051,098 :  
Filed: January 22, 2002 : **DECISION REGARDING PTA LETTER**  
Attorney Docket No. 4853.0023-02 :

This is in response to the "STATEMENT REGARDING PATENT TERM ADJUSTMENT," filed June 24, 2004. Applicants disclose that a terminal disclaimer was submitted in this application and thus, an adjustment of the patent term is not warranted.

The request for correction of the patent term adjustment (PTA) is **DISMISSED**.

Patentees are given **thirty (30) days** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

35 U.S.C. 154(b)(2)(B) provides that:

No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

37 CFR § 1.703(g) provides that:

No patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

The provisions of § 154(b), for adjustment due to examination delay, apply to original applications<sup>1</sup>, other than designs, filed on or after May 29, 2000. The Office calculates patent term

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<sup>1</sup> Since a continued prosecution application (CPA) under § 1.53(d) is a new application, the filing of a CPA application on or after May 29, 2000, in an application filed before May 29, 2000 causes the application (CPA) to be eligible for patent term adjustment.

adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

After the mailing of this decision, the Office will forward the application to the Office of Patent Publication for a prompt issuance of the patent. Any delays in the issuance of the patent will be reflected in the PTA determination provided with the issue notification which is mailed approximately three weeks prior to issuance of the patent.

Telephone inquiries specific to this matter should be directed to Kery Fries, Senior Legal Advisor, at (571) 272-7757.

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